

Application Ser. No. 09/939,865

Amend H – Resp to OA 2-06-06

**REMARKS****DETAILED ACTION**

1. Claims 3,13, 21-24, 26, 32, 39-42, and 44-46 have been canceled.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

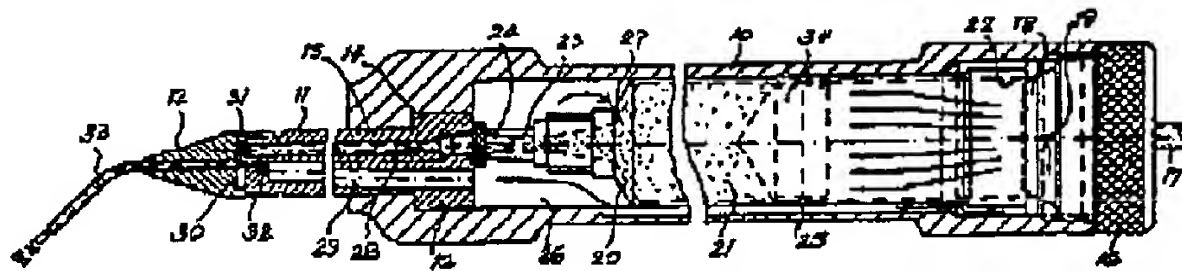
A person shall be entitled to a patent unless -  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The Examiner has rejected Claims 1-2, 4-5, 9-12,14-15,19, 29-31, 33-34, and 38 under 35 U.S.C. 102(b) as being clearly anticipated by Herold, et al. Herold et al disclose an apparatus for propelling a stream of particulate matter comprising all of the subject matter set forth in the claims above. A compressed gas source is delivered to a mixing chamber through a gas receiving port, and mixes with abrasive within the chamber, followed by discharge through a discharge conduit to strike a target material. The limitation of the particle-directing tube being "bendable" is a functional limitation which is deemed sufficiently broad to read on the discharge tube of Herold et al. While already shown as having a bend, the material in Herold et al is certainly capable of being bent. The device of Herold et al is intended for hand-held use for abrading the surfaces of a tooth located in a patient's mouth, and contains a pre-charged amount of particulate matter. No additional particulate matter is introduced by the gas delivery conduit, thus providing a disposable apparatus upon exhaustion of the particulate matter disposed within the mixing chamber, if so desired.

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In regards to Independent Claims 1, 10, and 29: Herold et al, clearly teaches a devices that is designed to be reused (with emphasis) by incorporating a cartridge within said handheld apparatus. Further, the apparatus of Herold, et al. fails to teach a mixing chamber with a predetermined quantity of particulate matter, whereas Herold, et al teaches a hand piece which utilizes a cartridge 20. Herold, et al. comprises a device which holds said cartridge 20 and is therefore, conducive to replacing particulate matter. Applicant claims a disposable apparatus that IS NOT conducive to replacing the particulate matter, and therefore is deemed to be designed as disposable. Applicant has amended Claims 1, 10, and 29 as follows to more clearly and concisely defined the present invention as being disposable:

"a gas delivery conduit, whereby the gas delivery conduit would be coupled to the gas receiving end wall and disposed within the mixing chamber and extend projecting linearly from said gas receiving end wall into the mixing chamber;" and

"the mixing chamber handheld apparatus for propelling particulate matter is pre-charged with a predetermined amount of particulate matter, wherein a majority of the particulate matter is stored in the mixing chamber, and wherein the gas delivery conduit handheld apparatus for propelling particulate matter is not conducive to the

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replenishment of particulate matter, thus providing an apparatus that is designed to be disposed of upon the exhaustion of the particulate matter disposed within the mixing chamber.”

Applicant respectfully emphasizes this element as being a unique and inventive matter, as the overall device provides a disposable apparatus. There is a distinction between designed to be disposable and simply “disposable if desired”. Applicant is claiming an apparatus that is designed to be disposable, with emphasis. By comprising the limitation of a gas delivery conduit projecting linearly from said gas receiving end wall, a user can not replace particulate matter via a cartridge into the mixing chamber of the apparatus. Applicant has amended the claims to further define the present invention as being disposable by comprising the following element(s):

“a gas delivery conduit, whereby the gas delivery conduit would be coupled to the gas receiving end wall and disposed within the mixing chamber and **projecting linearly from said gas receiving end wall into the mixing chamber;**” and

“the handheld apparatus for propelling particulate matter is pre-charged with a predetermined amount of particulate matter, wherein **a majority of the particulate matter is stored in the mixing chamber**, and wherein the handheld apparatus for propelling particulate matter is not conducive to the replenishment of particulate matter, thus providing an apparatus that is designed to be disposed of upon the exhaustion of the particulate matter disposed within the mixing chamber.”

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Applicant believes that the remarks and amendments herein have clearly provided claims with limitations that describe an apparatus that is clearly and concisely defined as one that is to be used for a single application of the pre-charged quantity of particulate matter. All other devices teach a means for replenishing the particulate matter, including Herold. Therefore, the prior art teaches devices that are designed to be reused, not discarded as claimed by the present invention. Applicant sincerely requests the Examiner reconsider the position on the aspect of disposable as defined in the present claims.

Regarding claims 5, 15, 26, and 34: Applicant further claims a manually bendable tip. A **manually bendable tip** is distinct from a tip that is **capable of being bent**. A manually bendable tip provides the user the ability to bend the tip during use, improving the efficiency of operation. A tip that is capable of being bent may, and generally does, require a tool or other structure to assist in bending. Manually bendable is defined by the American Heritage Dictionary as "Pertaining to or being operated by hands"; "Act of bending, turning, placing a curve within". Even though a tip can be illustrated as bent, this does not teach a tip that is manually bendable. More so, the tips provided as pre-bent are formed by factory tooling and comprise tube walls that are not conducive to being manually bent. Applicant believes that the claims comprising a manually bendable tip are distinct over the prior art in that the prior art does not teach a manually bendable tip. Applicant respectfully requests the Examiner reconsider the rejection of these claims.

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Applicant believes the rejection of Claims 1-2, 4-5, 9-12, 14-15, 19, 29-31, 33-34, and 38 under 35 U.S.C. 102(b) as being clearly anticipated by Herold, et al. has been overcome by amendments to Independent Claims 1, 10, and 29 herein. Applicant earnestly requests the Examiner reconsider and withdraw the rejection of Claims 1-2, 4-5, 9-12, 14-15, 19, 29-31, 33-34, and 38 under 35 U.S.C. 102(b) as being clearly anticipated by Herold, et al.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The examiner has rejected Claims 6-8, 16-18, and 35-37 under 35 U.S.C. 103(a) as being unpatentable over Herold et al in view of Dougherty. Dougherty discloses the known use of color coding of containers to identify the contents therein, and further disclose the known use of an end cap(70) for sealing the discharge end of a chamber to prevent the contents from being discharged. The use of color coding to help identify the contents of the chamber would have been obvious in view of Dougherty. Such color coding is used throughout industry for discriminating between similar looking containers, and for identifying their contents. To further provide an end cap at the distal end of the discharge conduit to prevent inadvertent discharge of the media from the chamber when not in use, would have been obvious in view of Dougherty.

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Applicant is claiming a handheld, disposable apparatus, wherein said apparatus comprising a predetermined amount of particulate matter. Herold, et al. teaches the installation of a cartridge. Applicant believes that the present invention is the first handheld particulate matter propelling apparatus taught as a pre-filled, disposable apparatus, and is claimed as such in claims 1, 10, and 29. Claims 6, 8, 16, 18, 35, and 37 comprise the element of color coding to identify to the type of particulate matter contained within said chamber. Herold, et al. utilizes a cartridge. Dougherty teaches the application of color coding respective to a material disposed within a cartridge. It is not known to provide color coding indication for a particulate propellant apparatus, as the Applicant is believed to be the first to provide such a device that is pre-filled with particulate matter. All of the prior teachings are directed towards color coding of cartridges and the utilization of such cartridges. Applicant teaches away from the use of a cartridge. It would not be obvious or with any motivation to combine color coding with a pre-filled particulate propellant apparatus as the particulate propellant apparatus are normally filled for each application.

Applicant believes the rejection of Claims 6-8, 16-18, and 35-37 under 35 U.S.C. 103(a) as being unpatentable over Herold et al in view of Dougherty has been overcome by amendment to Independent Claims 1, 10, and 29 and remarks herein. Applicant earnestly requests the Examiner reconsider and withdraw the rejection of

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Claims 6-8, 16-18, and 35-37 under 35 U.S.C. 103(a) as being unpatentable over Herold et al in view of Dougherty based upon the remarks and amendments herein.

6. Claims 20, 25, 27-28, 43, and 47-48 are allowed.

Applicant respectfully thanks the Examiner for recognizing the allowable matter in Claims 20, 25, 27-28, 43, and 47-48.

Claim 20 have been amended herein to correct minor antecedent basis for "chamber", amending "chamber" to "mixing chamber". Applicant believes this amendment does not change the scope of the claimed invention.

7. The Examiner has noted that Applicant's arguments filed October 24, 2005 have been fully considered but they are not persuasive. Applicant's new limitation introduced into independent claims 1, 10, and 29 wherein it is now recited "thus providing an apparatus that is designed to be disposed of..." is deemed to constitute a recitation of intended use. Although the cartridge (20) is disclosed as being replaceable, it is the choice of the user whether or not the apparatus is disposed of after exhaustion of the contents of the mixing chamber. Structurally, since Applicant's claimed device is no different from Herold et al, the claims are still deemed to be met by the Herold et al device. Note in Herold et al that the mixing chamber is pre-charged with a particulate matter, and the gas delivery conduit is not conducive for replacing particulate matter,

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since no additional particulate matter is supplied by the gas delivery conduit. The use of color coding and a sealing end cap are both broadly taught by the secondary reference to Dougherty.

Applicant believes that the Independent Claims 1, 10, and 29 as amended provide structure defining an apparatus that is disposable.

8. The Examiner has made the respective **OFFICE ACTION FINAL**. Applicant has been reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### **CONCLUSIONS**



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Applicants believe the amendments and remarks submitted herein, herein provide a complete response to the Office Action mailed on February 06<sup>th</sup>, 2006. Claims 1, 2, 4-12, 14-20, 25, 27-31, 33-38, 43, 47 and 48 remain in the application. Applicant believes the remaining claims are in condition for allowance. Applicant earnestly requests the Examiner reconsider and withdraw the rejections of claims 1, 2, 4-12, 14-20, 25, 27-31, 33-38, 43, 47 and 48.

The Examiner has established a shortened statutory period of three (3) months for response to the **Final Office Action**. Applicant has responded to the Office Action on or before April 06<sup>th</sup>, 2006 with a proper certificate of correspondence, being submitted in less than **TWO (2) Months** from the date of mailing of the subject **Final Office Action**. Therefore, the Applicant believes the response is timely and entitled to the benefits of a response that is less than Two (2) months after the mailing of the office action. Applicant believes that no additional fees are required at this time. Applicant believes the response provided is complete. Applicant believes the amendments have not introduced any new matter.

The present application, after entry of this amendment, comprises thirty-three (33) claims, including four (4) independent claims. Applicant has already submitted sufficient fees with the Original application for thirty-eight (38) claims, including four (4) Independent claims. Applicant, therefore, believes that no additional fee respective to claims is currently due.

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If the Examiner believes that there are any informalities that can be corrected by Examiner's amendment, a telephone call to the Agent of Record (Allen Hertz) at (561) 883-0115 (Office)(Please leave a message) or (561) 716-3915 (Cell phone) is respectfully solicited.

Respectfully submitted,



Allen D. Hertz

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Please submit all correspondence concerning this patent application to:

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